

APR 13 1949
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ARIZONA ATTORNEY GENERAL

Wayne R. Gibson, Executive Secretary
Arizona Teachers' Retirement System
405 Luhrs Tower
Phoenix, Arizona.

Dear Mr. Gibson:

We have your letter of April 1, 1949, wherein you ask several questions concerning application of the Teachers' Retirement Act of 1943 to the Institute of Educational Rehabilitation.

This institution was established pursuant to Chapter 141 Laws 1947, Sections 47-501--503, A.C.A. 1939 (1947 Supplement). Section 2 (47-502, supra) give the State Board of Educational Rehabilitation authority to employ and fix the compensation of assistants, teachers and other employees required for the administration of the act.

Your first question is:

"Is a person holding an active teachers' certificate and engaged in instructional or supervisory work in the employment of the Institute of Educational Rehabilitation, a prison branch, eligible to establish, or continue, membership in the Arizona Teachers' Retirement System?"

Section 54-1704, A.C.A 1939 (1947 Supplement) determines membership in the Teachers' Retirement System. Generally, those persons who were at the time of the effective date of the act or thereafter became "employees" are members of the system. "Employee" is defined in Section 54-1702, A.C.A 1939 (1947 Supplement) as "any teacher employed on an annual or monthly salary basis". We are thus led to the definition of the word "teacher" in this section:

"'Teacher' means any person holding an active teachers' certificate and engaged in instructional work, directly as classroom, laboratory, or other teacher, or indirectly as supervisory teacher, principal, superintendent or administrative officer, in any school or educational institution or agency supported by the state or any political subdivision thereof, other than the university of Arizona;" (Emphasis supplied)

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There can be no question but that the Institute is supported by the state". See subdivision 71, General Appropriation Act of 1947 (Laws 1947, Chapter 142, as amended by Laws 1947, Second Special Session, Chapter 7); subdivision 35, General Appropriation Act of 1949 (Laws 1949, Chapter 124). In our opinion the Institute of Educational Rehabilitation properly falls into at least one of the classes set up in this definition, "school or educational institution or agency". Our Court in 1927 adopted the definition "school" in Webster's New International Dictionary as proper: "school - a place for instruction in any branch or branches of knowledge". Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056; 52 ALR 244.

In Bastendorf v. Arndt, 290 Mich. 423, 283 N.W. 579, 124 ALR 445, it was said regarding the word "school";

"* * * the word is a generic one and, where not affected by its context means little more than an institution with educational purposes or activities".

The word "school" as used in Section 54-1702, supra, would seem to have been used in this broad sense. The phrase "educational institution" has also been defined by our Court. In Lois Grunow Memorial Clinic v. Oglesby, 42 Ariz. 98, 22 P. 2d 1076, the Court said:

"An educational institution has been judicially defined as 'one which teaches and improves its pupils; a school, seminary, college or educational establishment'. Cumberland Lodge No. 8, F. & A.M., v. Nashville, 127 Tenn. 248, 154 S.W. 1141; Curtis v. Allen, 43 Neb. 184, 61 N.W. 568; Essex v. Brooks, 164 Mass. 79, 41 N.E. 119; Peck v. Claflin, 105 Mass. 420; North St. Louis Gymnastic Society v. Hudson, 85 No. 32".

Webster's new International Dictionary, 2nd Edition, defines "agency", in the sense in which it is used here, as "instrumentality".

It is our opinion and you are so advised that the above definition of "teacher" is sufficiently broad to include those persons holding active teachers' certificates engaged in instructional or super-

visory work in the Institute of Educational Rehabilitation. Such persons are eligible to establish or continue membership in the Arizona Teachers' Retirement System.

Your first question being answered in the affirmative, you ask secondly:

"Does Section 54-1715, subsections (f) and (g) direct our assessment of the Normal Pension Fund biennium payment to any one of three state boards and institutions therein mentioned the amount determined by the 'Membership Payroll' of the Institute of Educational Rehabilitation?"

This question must be answered in the negative. Subsection (f) expressly provides:

"(f) Not later than the first day of January next preceding each regular session of the legislature, the board of trustees shall certify to the superintendent of public instruction, the board of regents of the university and state colleges, and the board of directors of the Arizona state school for the deaf and the blind, an estimate of the amounts which will become due and payable on the earnable compensation of employees of the state department of education, the state colleges, and the Arizona state school for the deaf and the blind during the following biennium on account of the normal contribution to the pension accumulation fund. The amount so certified shall be included in the respective budgets of such department and institutions, and appropriated and paid in the manner provided by law". (Emphasis supplied)

The provisions of this subsection and subsection (g) can only be invoked and applied where the amounts payable are on the earnable compensation of "employees of the state department of education", the "state colleges", or "the Arizona state school for the

deaf and blind". Persons engaged in instructional or supervisory work in the Institute of Educational Rehabilitation are not employees of any of these "departments", but are employees of the State Board of Educational Rehabilitation. (See Section 57-503, supra).

It becomes necessary to answer your third question:

"Would we be authorized to certify the Normal Pension Fund payment directly to the prison for inclusion in the budget of the prison?"

We must also answer this in the negative. Upon the same reasoning expressed in our answer to your second question, we find no authorization for you to certify the "Normal Pension Fund" payment for these persons to the prison - the teachers are not its employees and their earnable compensation does not arise from the prison appropriation. As we interpret the sections covering the educational rehabilitation system, it stands wholly independent of the State Prison itself. It has its own governing board and duties, and a separate appropriation requiring a separate budget.

Your final question becomes material, You ask:

"Please suggest the proper means of obtaining the Normal Pension Fund payment".

We find some difficulty in answering this question. Section 54-1715, supra, provides:

"Contribution by state and counties-
(a) There shall be paid semi-annually, on account of each member, into the normal pension accumulation fund and the accrued liability fund, and to be known respectively as the normal contribution and the accrued liability contribution, separate amounts each equal to a percentage of the member's earnable compensation to be determined on the basis of the liabilities of the retirement system as shown by actuarial valuation. (Emphasis supplied)

The remaining subsections of this section fail to use any language which specifically or in general terms provides the means of obtaining the "normal pension fund" payment on behalf of the employees of the rehabilitation board. Logically this payment should be certified to this board to be included in its own budget. The subsections, however, provide for obtaining said payment only from certain specific state institutions and the county.

Section 54-1720, A.C.A. 1939 (1947 Supplement) defining the powers and duties of the retirement board provides:

"The general administration and responsibility for the proper operation of the system and the provisions of this act shall be vested in the board. The board shall establish such rules and regulations as may be lawful and necessary for the administration of the funds of the system and to carry out the provisions of this act, and shall perform or direct the performance of all acts necessary to carry out the provisions of this act".
(Emphasis supplied)

The duty is thus positively placed on the board of trustees to carry out the requirements of the act. In our opinion this power requires the board to set up rules and regulations which will enable it to "collect" the required state contributions from all those institutions or departments which are employers of "members" of the Teachers' Retirement Act and are not specifically enumerated in Section 54-1715, supra. It is our view that the hereinbefore quoted subsection (a) of this section is mandatory and the remaining subsections merely set up the procedure to be followed by the respective employers. The specific enumeration is not exclusive, it merely provided for those "departments" then in existence. Such a construction would promote the purposes and intent of the retirement act, which act is to be liberally construed. Had the legislature limited the definition of "members" under the retirement act to those employees of the state institutions and the county specifically enumerated, a different interpretation would perhaps be necessary.

59 C.J., Statutes, Section 575, expresses this rule of construction:

"Where a statute deals with a genus, and the thing which afterward comes into existence is a species thereof, the language of the statute will generally be extended to the new species, although it was not known and could not have been contemplated by the legislature when the act was passed; * * *"

See 50 Am. Jur., Statutes, Section 237. The legislature must have intended that all "employees" as defined in the act be eligible for

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membership, and that all of the provisions of the act, those concerning contributions as well as benefits, applied equally to all of them.

It is our opinion that the board of trustees may enact rules and regulations which will enable the board to obtain the "normal pension fund" payment for these employees of the rehabilitation board from said employer board.

It must be noted, however, that the appropriation for the Institute of Educational Rehabilitation does not include an item for the payment of the Teachers' Retirement "Assessment" (Subsection 35, General Appropriation Act, 1949), and therefore no funds would appear to be presently available for such purpose. The suggested procedure, the submission by the board of trustees of an estimate to the rehabilitation board, could be followed, and the funds when appropriated to make the payment could be so used. Until such payments are made, the last sentence of Section 54-1714(b), A.C.A. 1939 (1947 Supplement) would seem to preclude the deduction of an employee's contribution from the salaries of these persons. It reads: "No deduction shall be made from any member's salary on account of which no contribution is made as provided in section 15 (sec. 54-1715)".

Very truly yours,

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Attorney General

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Assistant Attorney General

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